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Number_____

IN THE

Supreme Court of the United States

OCTOBER TERM 1974

LAWRENCE OWEN TJADEN

Petitioner

versus

CHARLENE F. TJADEN

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL, SECOND CIRCUIT, STATE OF LOUISIANA, OR, IN THE ALTERNATIVE, TO THE SUPREME COURT OF LOUISIANA

Petitioner respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeal, Second Circuit, State of Louisiana, which was entered in this action on May 28, 1974, or, in the alternative, to review the order and judgment of the Supreme Court of Louisiana by which that court, on July 1, 1974, refused to issue a writ of certiorari or review.

OPINIONS BELOW

Plaintiff, respondent here, brought this suit in the Twenty-sixth Judicial District Court of Bossier Parish, Louisiana, to secure a judgment granting full faith and credit to a divorce decree rendered in the Eighth Judicial Court of Clark County, Nevada. A copy of the Nevada judgment is filed herewith as Petitioner's Exhibit "A".

The District Court of Bossier Parish, Louisiana, in a written opinion rejected the Plaintiff's demands and dismissed her suit. The opinion is unreported, and a copy is annexed hereto as Petitioner's Exhibit "B".

Plaintiff, Respondent, thereupon perfected an appeal to the Court of Appeal for the Second Circuit of Louisiana, which court reversed the judgment of the trial court, recognized the validity of the Nevada divorce decree, and ordered its enforcement in Louisiana. The opinion of the appellate court has not yet been reported. A copy thereof is annexed hereto as Petitioner's Exhibit "C". An application for a rehearing was refused, without opinion on May 28, 1974 (Exhibit "D").

Petitioner then applied to the Supreme Court of Louisiana for certiorari and a writ of review which that court denied on July 1, 1974. A copy of the unreported order of the Supreme Court of Louisiana is attached as Petitioner's Exhibit "E". Under the rules of that court applications for rehearing are not considered on orders rejecting petitions for certiorari and review.

JURISDICTION

Jurisdiction of this court is invoked under the provisions of *28 U. S. C. 1257 (3)* and *28 U. S. C. 1651.* Since the final decision of the Supreme Court of Louisiana was rendered on July 1, 1974, this petition is being filed within the ninety-day period specified by law.

QUESTIONS PRESENTED FOR REVIEW

Whether a judgment of divorce rendered by default in favor of a wife in Nevada is entitled to full faith and credit in Louisiana and other states when she left the matrimonial domicile in Louisiana for the expressed purpose of obtaining a divorce in Nevada and resided there the minimum period of time required by the laws of that state, thereafter returning to Louisiana and then establishing a home in Texas.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Section 1 of *Article IV* of the *United States Constitution* provides:

"*Section 1. Full faith and credit*

"Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

The Congress of the United States provided for the authentication of such records and judicial proceedings in 28 *U. S. C.* 1738 and added in the third paragraph thereof:

"Such Acts, Records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken. June 25, 1948, c. 646, 62 Stat. 947."

As hereinafter shown, the constitutional question was raised in this case in the pleadings and briefs in the District Court, the Court of Appeal and the Supreme Court of Louisiana. The trial court followed the Constitution and jurisprudence of this court, but the appeallate courts held it to be inapplicable to the case at bar.

STATEMENT OF THE CASE

Plaintiff-Respondent, Charlene F. Tjaden, alleging that she obtained a decree of divorce in Clark County, Nevada, from Defendant-Petitioner, brought this suit against her husband who is domiciled in Bossier Parish, Louisiana, to obtain recognition of the Nevada decree, for a settlement of the community, for alimony, and support for the two children of the marriage.

Defendant answered alleging that the Nevada divorce is null and void for the reason that Plaintiff was not a bona fide resident of that state when the decree was issued, and that, accordingly, the court was without jurisdiction, and its decree was null and void and not entitled to full faith and credit in Louisiana where both parties reside.

The case was tried on these issues and the District Judge, after hearing the witnesses, rendered a written opinion rejecting Plaintiff's demands for the reason that Plaintiff's statement that she went to Nevada "to rest, to visit, and to contemplate a divorce", coupled with the fact that she stayed there only long enough to obtain a divorce on six weeks' of residence, negative any intention on her part to remain there permanently or indefinitely; and that "under Nevada law residence in that state must be bona fide with the intention of remaining there permanently, or, at least, indefinitely." (App. B).

The Court of Appeal reversed the judgment of the District Court, recognized the Nevada divorce, and awarded child support for the children of the marriage. (App. C). Defendant filed an application for rehearing which was denied on May 28, 1974, without opinion. (App. D).

The Supreme Court of Louisiana affirmed without opinion other than to state "on the facts found, the result is correct". (App. E).

Since none of the facts are disputed, the question presented to this Court is whether or not, on the basis of these

facts, the Respondent established a bona fide domicile in the State of Nevada so as to give the courts of that state jurisdiction over the marital union between Respondent and Petitioner and whether or not the Nevada divorce decree is entitled to full faith and credit in other states. Where the facts are undisputed, only questions of law are presented on appeal or certiorari.[1/]

Questions involving the full faith and credit to be given by one state to the judgments rendered by the courts of another state are federal questions.[2/] Such questions are subject to review by this Court.[3/]

The following undisputed facts are set forth in the opinion of the trial court and in the Court of Appeal decision, and also appear in the notes of evidence taken on the trial hereof:

> Before leaving Shreveport Respondent consulted an attorney in Shreveport who advised her that she could get a divorce in Nevada on the ground of incompatibility, a ground which is not legal in Louisiana. She told her husband that she was going to Nevada for a rest and to seek a divorce. She then went to Nevada and arrived there on December 20, 1972. Soon after her arrival in Las Vegas she consulted an attorney. The day following the statutory residence requirement of six weeks she filed her suit for divorce. A copy of the petition in the Nevada suit was served on Defendant-Petitioner in Bossier City, Louisiana, but he made no answer or appearance in the case. Respondent's divorce was granted by default in Las Vegas, Nevada, on March 13, 1973, following a twenty-one day delay for Peti-

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1/ *U. S. vs. Singer Mfg. Co.*, 374 U. S. 174, 83 S. Ct. 1773, 10 L. ed. 2d 823.
U. S. vs. Parke Davis & Co., 362 U. S. 29, 80 S. Ct. 503, 4 L. ed. 2d 505.

2/ *Jacobs vs. Marks*, 182 U. S. 583, 45 L. ed. 1241.
Commercial Pub. Co. vs. Beckwith, 188 U. S. 567, 47 L. ed. 598.

3/ *Pan Am Petroleum Corp. vs. Superior Ct. of Del.*, 366 U. S. 656, 81 S. Ct. 1303, 6 L. ed. 2d 584.
Staub vs. Baxley, 355 U. S. 313, 78 S. Ct. 277, 2 L. ed 2d 302.

tioner's answer, on the ground of "incompatibility", a ground not recognized in Louisiana. On the morning following the rendition of her divorce decree she left Las Vegas by plane for Shreveport, and went to Marshall, Texas, where she has since resided. She has never returned to Nevada. She did not take her furniture with her when she left for Nevada, but came back to Louisiana for it after her divorce decree was rendered. There is no evidence that she tried to find a job, a house or apartment, or enrolled her children, of school age, in a Las Vegas school, or that she did anything else there that would indicate an intention to make it her home. She gave no testimony that she went to Nevada to establish a bona fide residence in that state.

Since Petitioner made no appearance in the Nevada court, there is no question concerning his right to attack that court's decree.[4/]

Likewise, there is no question that Nevada law, like the law of Louisiana, requires bona fide residence with the intention to reside there permanently, or at least indefinitely.[5/]

The United States Supreme Court has upheld the duty of a state court to deny full faith and credit to a divorce obtained under circumstances less convincing than those listed above in the statement of facts.[6/]

4/ *Williams vs. N. Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577.
Eaton vs. Eaton, 227 La. 992, 81 So. 2d 371.

5/ *Walker vs. Walker* (Nev. Sup. Ct.), 198 P. 433.
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6/ *Williams vs. North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577.
Esenwein vs. Pennsylvania, 325 U. S. 279, 65 S. Ct. 1118, 89 L. ed. 1608.
Bell vs. Bell, 181 U. S. 175, 21 S. Ct. 551, 45 L. ed. 804.
Streitwolf vs. Streitwolf, 181 U. S. 179, 21 S. Ct. 553, 45 L. ed. 807.
Andrews vs. Andrews, 188 U. S. 14, 23 S. Ct. 237, 47 L. ed. 366.

In *Williams vs. North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577, the facts were almost identical with those in the case at bar and this Court ruled that the Nevada decree was not entitled to full faith and credit in North Carolina, saying:

> "Petitioners, long-time residents of North Carolina, came to Nevada, where they stayed in an auto-court for transients, filed suits for divorce as soon as the Nevada law permitted, married one another as soon as the divorces were obtained, and promptly returned to North Carolina to live. . . . It would be highly unreasonable to assert that a jury could not reasonably find that the evidence demonstrated that petitioners went to Nevada solely for the purpose of obtaining a divorce and intended all along to return to North Carolina. Such an intention, the trial court properly charged, would preclude acquisition of domicils in Nevada. See Williamson v. Osenton, 232 US 619, 58 L ed 758, 34 S Ct. 442."

In the case of *Esenwein vs. Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, 89 L. ed. 1608, this Court refused to honor a divorce where plaintiff, instead of returning to his former home went to another state. The facts in that case are also similar to the facts found by the District Court and the appellate courts in the case at bar. On the basis of these facts Your Honors ruled:

> "The Pennsylvania Supreme Court rightly indicated that if merely the Nevada decree had been in evidence, it was entitled to carry the day. But the Supreme Court found that on the entire showing there was convincing countervailing evidence to disprove petitioner's intention to establish a domicil in Nevada. The Pennsylvania courts have viewed their Constitutional duty correctly."

According to the Nevada decree the Respondent appeared before the court personally on the 13th day of March, 1973, and the divorce decree was signed on that day. (Exhibit

A). The following day she left Nevada and has never returned, nor does she intend to. The Nevada decree recites that "plaintiff has been and now is a bona fide and actual resident of the County of Clark, State of Nevada." Respondent of necessity had testified that she intended to make her home in Nevada, otherwise the court could not have found that she was in good faith a resident of the State. She alone could have testified as to her intentions. At the very time she gave her testimony she had laid her plans to leave the state. As a matter of fact, she did not intend to stay in Nevada when she left Louisiana. Her testimony in the Nevada court was the basis for its decree, and she committed a fraud on the court in giving false testimony as to her bona fide residence in that state.

The trial judge who saw and heard the witnesses concluded from all the facts that Respondent went to Nevada to get a divorce and that she did not in good faith intend to make that state her home. There was ample evidence to sustain his findings and there was no manifest error in his evaluation of the factual evidence in the record.

In view of the facts and the law set forth hereinabove, the divorce decree of the Nevada court was rendered without jurisdiction and is not entitled to full faith and credit in Louisiana, or in any other state of the United States.

So far as Petitioner is concerned, as of July 1, 1974, the judgments in Louisiana are final, and any relief must come from this Court.

Petitioner raised his Federal Constitutional claims at every stage of the proceedings below: in a special plea of unconstitutionality contained in his answer and in briefs in the trial court; on appeal to the Court of Appeal for the Second Circuit of Louisiana, in his briefs and application for a rehearing in that court; and finally in his petition for certiorari and writ of review and briefs filed in the Supreme Court of Lou-

isiana. The trial court sustained the plea of unconstitutionality but the appellate courts ruled it to be inapplicable to the issues here.

REASONS FOR GRANTING THE WRIT

1. The decisions of the State appellate courts are directly in conflict with the Full Faith and Credit clause of the United States Constitution, Article IV, Section 1, and the provisions of 28 U. S. C. 1738, as interpreted and applied by this Court in *Williams vs. North Carolina*, 325 U. S. 226, 65 S. Ct. 1092, 89 L. ed. 1577, in *Esenwein vs. Pennsylvania*, 325 U. S. 279, 65 S. Ct. 1118, 89 L. ed. 1608, and in other cases decided in this Court. In the *Williams* case this Court said (325 U. S. 238-9, 80 L. ed. 1586):

> "In seeking a decree of divorce outside the State in which he has theretofore maintained his marriage, a person is necessarily involved in the legal situation created by our Federal system whereby one State can grant a divorce of validity in other States only if the applicant has a bona fide domicil in the State of the court purporting to dissolve a prior legal marriage. . . .
>
> And, as was said in connection with another aspect of the Full Faith and Credit Clause, our conclusion 'is not a matter to arouse the susceptibilities of the States, all of which are equally concerned in the question and equally on both sides.' Fauntleroy v. Lunn, 210 US 230, 238, 52 L ed 1039, 28 S Ct 641."

The undisputed facts show that neither party had a legal residence in the State of Nevada and the divorce decree rendered there is not entitled to full faith and credit anywhere, as this Court ruled in

Bell vs. Bell, 181 U. S. 175, 177, 21 S. Ct. 551, 45 L. ed. 804, 807:

"No valid divorce from the bond of martimony can be decreed on constructive service by the courts of a state in which neither party is domiciled. . . . Upon this record, therefore, the court in Pennsylvania had no jurisdiction of the husband's suit for divorce, because neither party had a domicil in Pennsylvania, and the decree of divorce was entitled to no faith and credit in New York or in any other state."

2. Petitioner seeks to maintain his family and his marital union with the Respondent. While marriage is a civil contract between man and woman, it is also a relationship in which all the states of the Union are deeply concerned because it is the foundation upon which society depends for its very survival. As this Court remarked in the *Williams* case (325 U. S. 230, 89 L. ed. 1581-2):

"Divorce, like marriage, is of concern not merely to the immediate parties. It affects personal rights of the deepest significance. It also touches basic interests of society. Since divorce, like marriage, creates a new status, every consideration of policy makes it desirable that the effect should be the same wherever the question arises."

Mr. Justice White in *Andrews vs. Andrews,* 188 U. S. 14, 31, 23 S. Ct. 237, 47 L. ed. 366, 369, quoted from *Maynard vs. Hill,* 125 U. S. 190, 8 S. Ct. 723, 31 L. ed. 654, on marriage and divorce, as follows:

" 'It is an institution, in the maintenance of which in its purity the public is deeply interested, for it is the foundation of the family and of society, without which there would be neither civilization nor progress.' 125 US 210, 31 L. ed. 658, 8 Sup. Ct. Rep. 728."

The foregoing principles are peculiarly applicable here.

3. The subject matter of this case is also of great importance because the State court rulings, unless reversed, establish an unhappy and unfortunate precedent in an area in which the Nation has a particular concern. If these decisions are allowed to stand, there will be no way in which a party may prevent his or her spouse from dissolving a marriage by a short sojourn in another state followed by a decree of a court in a jurisdiction where neither party resides. Then marriage will become an institution of temporary contract and cohabitation, and divorce a matter of simple arithmetic and uninhibited choice.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted and the judgments of the Louisiana courts reversed with directions to enter judgment for Petitioner.

Respectfully submitted,

ORIGINAL SIGNED
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APPENDIX "A"

IN THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

CHARLENE F. TJADEN,
Plaintiff,
vs.
LAWRENCE OWEN TJADEN,
Defendant.

No. A 109571
DECREE OF DIVORCE
Filed March 13, 1973

The above entitled cause coming on regularly for trial before the above entitled Court, sitting without a jury, on this day, upon the Complaint of the plaintiff and upon all the records and files herein, plaintiff appearing personally and through her attorney, R. PAUL SORENSON, and no appearance having been made by the defendant, nor by attorney on his behalf, and it further appearing to the satisfaction of the Court that the Summons and a copy of the Complaint herein were duly and regularly served upon the defendant on the 20th day of February, 1973, in the County of Bossier, State of Louisiana, that a period of more than twenty days has elapsed since said service upon the defendant, that his default was duly and regularly entered herein for his failure to appear herein; that there is no answer or plea of any kind of said defendant: the Court did proceed to hear the evidence submitted on the part of the plaintiff in support of the Complaint, and the Court having been duly advised in the premises and having considered the law and evidence finds:

That for more than six weeks immediately preceding the commencement of this action, plaintiff has been and now is a

bona fide and actual resident of the County of Clark, State of Nevada, and that this Court has personal jurisdiction over the plaintiff, and the jurisdiction of the cause of action; that the plaintiff and defendant were intermarried at Paola, Kansas, on or about the 25th day of July, 1959, and ever since have been and now are husband and wife; that there are two children the issue of said marriage, namely, MARC TJADEN, age 10 years, and BRENT TJADEN, age 8 years, said children are in the care, custody and control of plaintiff; that there is community property owned by the parties, acquired during the marriage, but said community property is without the jurisdiction of this Court and, therefore, makes no order relative thereto; that plaintiff and defendant are incompatible and their tastes, natures, views, likes and dislikes have become widely separated and divergent so that the parties have been and now are incompatible to such an extent that it is impossible for them to live together as husband and wife, so that it now appears that there is no possibility of a reconciliation between the parties hereto, and there remains such an incompatible temperament between the parties hereto that a happy marital status can no longer exist; and the Court decides in favor of the plaintiff and against the defendant;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the bonds of matrimony heretofore and now existing between the plaintiff and defendant be, and the same are, hereby wholly dissolved, set aside and held for naught and the plaintiff be, and she is, hereby decreed an absolute and final decree of divorce from the defendant and that the parties, and each of them, are hereby restored to the status of single persons.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the care, custody, and control of MARC TJADEN and BRENT TJADEN, be, and the same is hereby awarded to

plaintiff. The Court is without jurisdiction of defendant to make any order for support.

The Court hereby retains jurisdiction of this action and the parties hereto for the purpose of making such other and further order as may be just and proper for the custody of the minor children of the parties.

DATED this 13th day of March, 1973.

MICHAEL J. WENDELL
District Judge

APPENDIX "B"

CHARLENE F. TJADEN
VS.
LAWRENCE OWEN TJADEN

Number 39,591
26TH JUDICIAL DISTRICT COURT
BOSSIER PARISH, LOUISIANA

OPINION OF THE COURT

Plaintiff filed a petition in this Court seeking injunctive relief, a property settlement, alimony, and child support following a divorce obtained by her in the State of Nevada.

Defendant answered the rule attacking the validity of the Nevada divorce decree.

Evidence was taken at the hearing held June 21, 1973, in connection with the rule and this Court asked that the question of the validity of the Nevada decree be briefed. These briefs were filed.

The evidence shows that plaintiff left Shreveport, Louisiana, on or about December 20, 1972, and went to Las Vegas, Nevada, with the stated intention of getting away for a rest and considering the possibility of obtaining a divorce while in Nevada with relatives.

It was further shown that plaintiff did in fact institute a divorce action in Nevada while living with her mother there and did obtain a divorce decree on March 13, 1973.

On the following day, March 14, 1973, she and the two children left Nevada, flew to Shreveport, La. and then went to Marshall, Texas, where they had resided since down to the hearing date.

Defendant was served in Louisiana with a copy of the petition in the Nevada suit, but not in Nevada. He made no appearance, signed no waiver of appearance in the Nevada suit, and has in no manner acquiesced in the Nevada decree.

He is therefore entitled to attack the validity of the decree collaterally.

Rice Vs. Rice, 336 U. S. 674, 93 L. Ed. 957
Sutton Vs. Leib, 342 U. S. 402, 96 L. Ed. 448
Williams Vs. North Carolina, 325 U. S. 226, 65 S. Ct. 1092
Juneau Vs. Juneau, 227 La. 921, 80 So. 2d 864

Under Nevada law residence in that State must be bona fide with the intention of remaining there permanently, or at least, indefinitely.

Walker Vs. Walker (Nev. Sup. Ct.), 198 Pac. 433
Latterner Vs. Latterner (Nev. Sup. Ct.), 274 Pac. 194

Under the above facts and jurisprudence this Court is of the opinion that, although plaintiff remained in Nevada the required time, her actions in leaving the day following rendition of the decree in that State negates any intention on her part to remain there permanently or indefinitely. She went there to rest, to visit, and to contemplate divorce. She left immediately upon consummation of the divorce and returned to Shreveport area (Marshall, Texas being just across the Texas State line and less than 40 miles from Shreveport).

This ruling is made after due consideration of the two Louisiana Second Circuit Court of Appeal cases cited by plaintiff's counsel. The quotation from *Staples Vs. Staples* (2nd Cir., 1970), 232 So. 2d 904, in counsel's brief (Page 8) points out the distinction between Arkansas and Nevada residence requirements. Arkansas law requires no showing of intent to permanently (or indefinitely) reside, while Nevada does.

For these reasons plaintiff's demands must be rejected at her costs.

Opinion rendered this 20th day of September, 1973.

s/ENOS C. McCLENDON, JR.
Judge

APPENDIX "C"

COURT OF APPEAL
SECOND CIRCUIT
STATE OF LOUISIANA

NO. 12,279

* * * * *

CHARLENE F. TJADEN — Plaintiff - Appellant

v.

LAWRENCE OWEN TJADEN — Defendant - Appellee

* * * * *

Opinion Filed April 23, 1974

By Hall, Judge

Plaintiff, Charlene F. Tjaden, a resident of Marshall, Texas, filed suit against defendant, Lawrence Owen Tjaden, a resident of Bossier Parish, Louisiana, seeking a settlement of community property, alimony for herself and child support for her two children. Plaintiff further sought a temporary restraining order and ultimately a preliminary and permanent injunction restraining defendant from encumbering or disposing of any community property. It is alleged in plaintiff's petition that she and defendant were married in Kansas in 1959, and remained married until March 13, 1973, when plaintiff obtained a divorce in the State of Nevada. It is alleged that community property was acquired during the marriage and that two children were born of the marriage, both boys, ages eight and ten.

A rule issued directed to the defendant ordering him to show cause why a preliminary injunction should not be granted and why he should not be ordered to pay alimony pendente lite

for the support of plaintiff during the pendency of the proceedings in the amount of $500 per month and child support for the support of the two minor children during the pendency of the proceedings in the amount of $400 per month.

Defendant filed an answer to the petition and rule alleging the divorce decree obtained by plaintiff in the State of Nevada is null and without force and effect because plaintiff was not a bona fide resident or domiciliary of the State of Nevada and the Nevada court was without jurisdiction. Alleging that the parties are still married, defendant prayed for rejection of all of the plaintiff's demands. Defendant further alleged his inability to pay the alimony and child support sought by plaintiff and alleged his willingness to provide for his wife and children in his home.

At the trial of the rule, it was agreed that the issues to be tried were the validity of the Nevada divorce decree and the amount of child support pendente lite, all other issues to be reserved until trial on the merits. After trial, in a written opinion, the district court held defendant was entitled to collaterally attack the validity of the Nevada divorce decree, that under Nevada law residence in that state must be bona fide with the intention of remaining there permanently or at least indefinitely, that plaintiff's action in leaving Nevada the day following rendition of the divorce decree in that state negates any intention on her part to remain there permanently or indefinitely, and that plaintiff's demands should, therefore, be rejected. Judgment was rendered accordingly and plaintiff perfected a devolutive appeal.

The primary and threshold issue presented by this appeal is whether the Nevada divorce judgment must be or should be recognized and enforced in Louisiana. For reasons expressed in this opinion, we reverse the decision of the district court on this issue and hold the Nevada judgment is entitled to full faith

and credit and to be enforced in this state. This holding necessitates a consideration of the issue of the amount of child support.

Based on the evidence, we find the pertinent facts to be as follows:

Prior to their separation in December, 1972, plaintiff and defendant and their two young sons were living in Bossier City, Louisiana, in a home recently constructed by them. Together they operated an Arthur Murray Dance Studio in Shreveport. Marriage problems developed and shortly before their separation plaintiff consulted an attorney and the possibility of a Nevada divorce was discussed.

There was discussion between plaintiff and defendant about him moving out of their home which he refused to do. On December 18, plaintiff, with her two children and their personal belongings, left home and traveled by bus to Las Vegas, Nevada, where her mother and brother lived. She stayed with her brother for the first week and then moved into her mother's home, where she remained continuously until March 14, 1973, the day after the Nevada divorce decree was rendered. She did not leave the State of Nevada during that time.

Plaintiff went to Las Vegas because of the problems she and her husband were having, to get away for awhile because of her health as she was emotionally upset, to rest, and to seek a divorce. She consulted an attorney in Nevada, who wrote to defendant on January 10. Suit for divorce on the grounds of incompatibility was filed in Nevada and defendant was served with a summons and a copy of the complaint on February 20. On March 13, a decree of divorce was rendered by the Nevada court.

On March 14, plaintiff, en route to Marshall, Texas, flew to Shreveport, the nearest airport, and was driven from the airport directly to Marshall, a city in East Texas about forty miles from Bossier City. She lived in a motel there for about

a week until she rented an unfurnished house, where she and the children have lived since that time. She intends to move into a house in another neighborhood before school starts in September.

The principles of law applicable to the issue presented in this case were recently summarized by this court in *Hampson v. Hampson*, 271 So. 2d 898 (La. App. 2d Cir. 1973):

> "Anyone at interest has the right to collaterally impeach a decree of divorce rendered in another state by proving that the court had no jurisdiction.[1] [[1]An exception or limitation to this rule exists where the party against whom the divorce judgment was rendered made an appearance, executed a waiver or otherwise participated in the proceedings in the other state, thereby precluding a collateral attack on the judgment in the other state. Johnson v. Muelberger, 340 U. S. 581, 71 S. Ct. 474, 95 L. Ed. 552 (1951); Boudreaux v. Welch, 249 La. 983, 192 So. 2d 356 (1966); Reeves v. Reeves, 209 So. 2d 554 (La. App. 2d Cir. 1968). The exception has no application in the instant case as plaintiff did not participate in any manner in the Arkansas proceedings.] The judicial power to grant a divorce, that is, jurisdiction, strictly speaking, is founded on domicile. The only question which the courts of this state can consider with respect to a decree of the courts of another state is the jurisdictional requirement of domicile. Louisiana courts will give full faith and credit to divorce decrees rendered by courts of other states except where it has been conclusively shown by sufficient proof that the court rendering the decree did not have the jurisdictional requirement of domicile. The burden of undermining the decree of the other state rests heavily upon the assailant. Williams v. State of North Carolina, 325 U. S. 226, 65 S. Ct. 1092, 89 L. Ed. 1577 (1945); Navarrette v. Laughlin, 209 La. 417, 24 So. 2d 672 (1946); Juneau v. Juneau, 227 La. 921, 80 So. 2d 864 (1955); Turpin v. Turpin, 175 So. 2d 357 (La. App. 2d Cir. 1965)."

There is no dispute that defendant is entitled to collaterally attack the Nevada divorce decree as he did not make an appearance, execute a waiver, or otherwise participate in or acquiesce in the Nevada proceedings.

Both parties agree that the Nevada law relating to residence or domicile necessary to confer jurisdiction in divorce cases requires physical presence of the party in that state for the entire statutory period of six weeks prior to and including the commencement of the action, accompanied by an intent to make Nevada the party's home and to remain there permanently, or at least for an indefinite time. Thus, it appears that Nevada law is consistent with traditional definitions of domicile, requiring actual presence together with an element of intent.

There is no question about plaintiff's actual presence in Nevada during the required period of time. The inquiry, then, narrows down to whether defendant bore his heavy burden of proving a lack of intent on the part of plaintiff to make Nevada her home and to live there permanently or indefinitely.

Defendant correctly argues that a person's intent can usually be determined only from the person's actions. *Crichton v. Krouse*, 142 So. 635 (La. App. 2d Cir. 1932). Defendant points out that plaintiff talked to a lawyer in Louisiana about a Nevada divorce before leaving home, she told her husband she was going to Nevada to rest and seek a divorce, she employed a Nevada lawyer a few days after arriving in Nevada, she filed suit and obtained the judgment in the shortest possible period of time, and returned to the Shreveport - Bossier area the next day after the divorce decree was rendered. Defendant argues these actions by plaintiff negate any intent on her part to make Nevada her home or to live there permanently or indefinitely, but, to the contrary, evidence her intent to stay in Nevada only long enough to obtain a divorce which she could not have obtained in Louisiana.

On the other hand, plaintiff points out she had close family in Nevada and the logical place for her to go and make her home upon deterioration of her marriage was with her mother. She did, in fact, make Nevada her home. She stayed in Nevada until after the divorce was granted and never returned to Louisiana. She had no residence or domicile in Louisiana or anywhere other than Nevada during the period she lived in that state. Plaintiff argues these actions manifest an intention on her part to abandon her Louisiana domicile and to establish a domicile elsewhere.

Defendant cites several Federal and Louisiana cases in which out-of-state divorce judgments were not accorded full faith and credit because of lack of jurisdiction of the out-of-state court.

In the landmark case of *Williams v. State of North Carolina*, supra, the United States Supreme Court held that "Domicil implies a nexus between person and place of such permanence as to control the creation of legal relations and responsibilities of the utmost significance". It was held that where the constitutional issue of full faith and credit is raised, "the proper criteria for ascertaining domicil, should these matters be in dispute, become matters for Federal determination". The court approved the trial judge's instruction to the jury that domicile is "that place where a person 'has voluntarily fixed his abode . . . not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time' ".

The facts in *Williams* were that appellants, long-time residents of North Carolina, came to Nevada where they stayed in an auto-court for transients, filed suits for divorce as soon as the Nevada law permitted, married one another as soon as the divorces were obtained, and promptly returned to North Carolina to live. The court held the jury could reasonably con-

clude from the evidence that appellants went to Nevada solely for the purpose of obtaining a divorce and intended all along to return to North Carolina, which intention would preclude acquisition of domiciles in Nevada. North Carolina was not required to give full faith and credit to the Nevada divorce judgment.

In *Juneau v. Juneau*, 227 La. 921, 80 So. 2d 864 (1955) the court refused to give full faith and credit to a Nevada divorce decree obtained by the wife. The husband and wife who were domiciled in Louisiana separated on December 20, 1952, and on January 30, 1953, a suit instituted in Louisiana between them was dismissed by consent of the parties. The next day, January 31, 1953, the wife left for Las Vegas, Nevada, where she filed for divorce after an alleged six weeks residence and was granted a divorce by default on the ground of mental cruelty on April 9, 1953. When she left Louisiana she was given two weeks vacation with pay and was also granted a leave of absence by her employer. Shortly after obtaining the divorce in Nevada, she called her employer in New Orleans and wanted to come back to work there. At that time an opening was not available and she worked for a short time in Houston but then returned to New Orleans and resumed her employment with the same company. The court held that the wife had not established a residence in Nevada. The court apparently relied to some extent on LSA - Civil Code Art. 39 which provides that a married woman has no other domicile than that of her husband, but this legal fiction is not to be considered in determining jurisdiction based on domicile for purposes of full faith and credit. *Williams v. State of North Carolina*, 317 U. S. 287, 63 S. Ct. 207, 87 L. Ed. 279 (1942).

In *Eaton v. Eaton*, 227 La. 992, 81 So. 2d 371 (1955) certiorari denied 350 U. S. 873, 76 S. Ct. 116, 100 L. Ed. 772 (1955), the court refused to recognize the validity of an Arkansas divorce. The evidence in that case clearly showed that the

husband who obtained the Arkansas divorce never lived in Arkansas at all but was living in Louisiana first with his wife and then with another woman during the months prior to the rendition of the Arkansas decree. The primary issue in this case was whether the wife was estopped from attacking the validity of the Arkansas divorce by reason of having signed a waiver of appearance.

In *State v. Wenzel,* 185 La. 808, 171 So. 38 (1936) the court held that a Mississippi court was without jurisdiction to render a divorce judgment where both parties admitted that they were residents of New Orleans, Louisiana, prior to their marriage, during their marriage up to the date of their separation, and that neither ever acquired a residence or domicile elsewhere.

In *Austin v. Austin,* 192 So. 2d 890 (La. App. 2d Cir. 1966) the wife filed suit in Louisiana for separation from bed and board and the defendant husband filed an exception of no right of action setting up as a bar to plaintiff's suit a final divorce decree granted to him in Arkansas. This court held the Arkansas court was without jurisdiction and overruled the exception. The husband rented a two-room apartment without kitchen facilities in Magnolia, Arkansas on October 1, 1965. His children remained in Shreveport at the matrimonial domicile. His work required him to travel and he made weekly visits to Shreveport. He filed suit for divorce sixty-three days after arriving in Arkansas, and returned to Shreveport, January 15, 1966, the day after the Arkansas decree was rendered.

In *Thompson v. Thompson,* 212 So. 2d 183 (La. App. 3d Cir. 1968) writ denied 252 La. 950, 215 So. 2d 125 (1968) the court refused to give full faith and credit to an Ohio divorce judgment where the wife left Louisiana and moved to Ohio, but was in Ohio less than the required one-year period prior to filing the divorce suit there. Since the residence re-

quirement was not fulfilled, the Ohio court was without jurisdiction.

In *Duke v. Duke*, 216 So. 2d 834 (La. App. 2d Cir. 1968) this court held that an Arkansas court was without jurisdiction where the husband rented a room in a hotel in Arkansas for the required residence period but continued to operate a service station in Shreveport.

In *Ford v. Ford*, 286 So. 2d 385 (La. App. 2d Cir. 1973) this court held that the husband did not establish or maintain a residence in the State of Arkansas within the meaning of the provisions of the applicable statutes of that state. He rented a room at a motel but continued in his employment in Homer, Louisiana, to which he commuted daily. The day following the divorce he returned to Homer. He admitted his main reason for moving to Arkansas was not to establish a domicile but to get a divorce. A most substantial portion of the husband's time was spent in Louisiana.

Plaintiff cites several cases in which divorce judgments of other states have been recognized and enforced in Louisiana.

Aarnes v. Aarnes, 172 La. 648, 135 So. 13 (1931) involved the validity of a Nevada divorce obtained by the husband. The husband testified he moved to Nevada with the intention of permanently residing there. He established a bank account in Reno, purchased a full year's Nevada automobile license for his car and continued to reside in Nevada after obtaining the judgment of divorce. He was remarried in Nevada and his marriage certificate shows him as a resident of Reno. The court held the wife failed to sustain the burden of proving bad faith on the part of her husband by a fair preponderance of the evidence and accorded the Nevada judgment full faith and credit.

In *Voorhies v. Voorhies*, 184 La. 406, 166 So. 121 (1936) the court accorded a Nevada divorce decree full faith

and credit. The husband resigned his position with a company in Louisiana, stated to his wife and others that he intended to leave Louisiana permanently and establish a domicile elsewhere and that he expected to institute proceedings for divorce. He left Louisiana in October, 1929, and went to Reno where he obtained a divorce on April 28, 1930. He attempted to find employment and to promote a business in Reno but was unsuccessful, went to California for awhile, returned to Reno and then went to Houston where he finally found employment. He was transferred by his company back to Louisiana in 1934. In finding that he was a bona fide resident of Nevada, the court noted that if he went to the State of Nevada for the sole purpose of obtaining a quick, easy divorce with no intention of residing there permanently, the judgment obtained there would be null and void. On the other hand, simply because he went to that state in order to facilitate his obtaining a divorce and took advantage of the laws which his new domicile afforded him would not be grounds for holding that he did not establish a bona fide residence in that state.

Navarrette v. Laughlin, 209 La. 417, 24 So. 2d 672 (1946) involved the validity of a Mississippi divorce. In holding the Mississippi court had jurisdiction, the court found the husband resided in Mississippi more than one and a half years prior to the time the decree of divorce was rendered and continued to reside there after the divorce and did not return to Louisiana, but went to Florida and engaged in business and remained there some six months. He was absent from Louisiana at least two years. Although the evidence showed he maintained some contacts with the State of Louisiana, the court held that evidence was not sufficient to overcome the positive proof that he actually resided in Mississippi.

In *Walker v. Walker,* 157 So. 2d 476 (La. App. 3d Cir. 1963) affirmed in part, reversed in part, 246 La. 407, 165 So. 2d 5 (1964) the court accorded an Arkansas divorce

decree obtained by the husband full faith and credit. The parties lived in Shreveport where the husband was employed as a traveling salesman with a territory including parts of East Texas, North Louisiana, South Arkansas and part of Mississippi. They separated in January, 1961, at which time the wife moved to Lafayette and the husband moved to an apartment in Texarkana, Arkansas. The husband actually rented and occupied an apartment there, he used and paid for utility services, he opened a bank account there and during the week days he traveled throughout the territory but on the weekends he returned to his apartment in Texarkana. There was no evidence he had any other home or domestic establishment except the apartment in Arkansas. He was still living there almost a year after he moved. The court held Arkansas was his actual residence as well as the place which he intended to be his principal establishment or home and, therefore, the Arkansas court had jurisdiction.

In *Gilbert v. Cowan*, 180 So. 2d 63 (La. App. 2d Cir. 1965) this court accorded full faith and credit to an Arkansas divorce judgment obtained by the wife. The parties separated on March 11, 1961 and the wife moved to Pine Bluff, Arkansas with her four children and her household belongings. She established a residence and retained such residence until August 20, five days after obtaining a divorce judgment, at which time she moved to Alexandria, Louisiana, where two days later she remarried.

Staples v. Staples, 232 So. 2d 904 (La. App. 2d Cir. 1970) also involved an Arkansas divorce judgment. On April 3, 1968, the wife left Louisiana, the state of the matrimonial domicile and began residing with her aunt and uncle in Arkansas. On June 11, 1968, she filed an action for divorce and judgment of divorce was rendered on August 28, 1968. On the same date as rendition of the divorce, she left Arkansas and returned to Louisiana. The defendant testified that she did

not go to Arkansas for the express purpose of obtaining a divorce, and only decided to return to Louisiana so that the child she was carrying would be born in this state rather than Arkansas. The validity of the divorce was recognized by this court, applying the Arkansas statutory standard of actual residence for three months rather than the Louisiana requirement of domicile.

The validity of an Arkansas divorce decree was again considered by this court in *Hampson v. Hampson*, 271 So. 2d 898 (La. App. 2d Cir. 1972). The husband moved from the martimonial domicile in Shreveport to Taylor, Arkansas in January, 1968. He rented a room and lived in and spent most nights in the room. He opened a bank account in Arkansas, did considerable business with a local service station and sent and received mail at his Arkansas address. The defendant testified he did not intend to remain permanently in Taylor, but did intend to remain permanently in Arkansas with the hope of opening a business in Hot Springs. During the period he continued to work at a plant near Minden, Louisiana, which was a forty-five minute to one hour drive from his residence in Arkansas and he also maintained a second bank account in Shreveport and moved back to Shreveport immediately after obtaining the divorce. In spite of the language used in *Staples*, this court reaffirmed its right to make its own determination of whether the Arkansas court had jurisdiction based on domicile. Compliance with the Arkansas statute, defining residence as actual presence which is equated to domicile as a matter of public policy of that state, was mentioned as a primary but not sole criteria. This court concluded that the wife failed to bear the heavy burden of proving that defendant did not have his actual residence or domicile in Arkansas and held the Arkansas court had jurisdiction.

Both *Staples* and *Hampson* have been criticized as having departed from an application of traditional definitions of

domicile because of lesser requirements made in another state's statute. See Pascal, 31 L. L. R. 314 (1971) and 34 L. L. R. 323 (1974). To the extent that these decisions relied on the Arkansas statute's definition of domicile or residence, they are not applicable to the present litigation involving Nevada law, which conforms to traditional concepts of domicile.

The foregoing review of the jurisprudence dealing with recognition of foreign divorces reveals that Louisiana courts have consistently expressed adherence to the well-established principals of law set forth earlier in this opinion in the quotation from *Hampson*. It also becomes clear that the courts, within the framework of these principles, have decided each case on its own particular facts, giving due weight to the heavy burden of proof borne by the assailant of the out-of-state divorce decree.

In the case now before this court, our review of the evidence leads us to the conclusion defendant has failed to bear his heavy burden of proving by sufficient and convincing evidence that plaintiff did not have her domicile in Nevada when the divorce action was commenced in that state.

There is no question of plaintiff's actual presence in Nevada for the required period of time. She moved there with her children and their personal belongings. She actually made her home and principal establishment there for almost three months. Very significantly, she had a good and logical reason for going to Nevada other than to obtain a divorce—to live with her mother who was a long-time resident of Nevada. That she also intended to avail herself of Nevada's liberal divorce laws while there is not of itself a sufficient basis for holding she did not establish a domicile in that state.

There is no evidence she intended to retain a domicile in Louisiana—her actions being to the contrary. She left Louisiana and had not returned at the time of trial of this action—

apparently intending to stay in Texas since she has plans to find another house there before school starts next fall.

The primary fact relied on by defendant and by the district court in its opinion is that plaintiff left Nevada the day after the divorce decree was rendered and returned to the "Shreveport area". While this fact lends support to defendant's case, we do not regard it as conclusive of plaintiff's intent while in Nevada. This action on her part is removed in time from the commencement of the action in Nevada, which is the determining time for purposes of the Nevada court's jurisdiction. While Marshall, Texas is not far from the Shreveport - Bossier area, it is certainly not a part of the metropolitan area and is in another state. She never returned to her former Louisiana domicile.

It is to be noted that in most of the cases in which recognition of an out-of-state divorce has been refused, the party either never physically resided in the other state, or never actually severed his ties with Louisiana, or went to the other state solely for the purpose of getting a divorce with no other reason for going and promptly returned to Louisiana after obtaining the divorce. None of these factors exist here.

We conclude the evidence is insufficient to prove plaintiff did not intend to make Nevada her home, at least indefinitely, after leaving Louisiana and through the commencement of her action in Nevada. The Nevada judgment is entitled to be accorded full faith and credit and to be recognized in Louisiana.

Having concluded the Nevada divorce judgment is valid, it is necessary to consider the issue of the amount of child support, pendente lite, which defendant must pay, an issue not reached by the district court in view of its decision on the validity of the Nevada divorce.

The law is well settled that it is the obligation of both the mother and the father to support, maintain and educate their children. LSA - C. C. Arts. 227 and 230. In determining the amount of child support to be awarded, the court must take into consideration the needs of the children and the circumstances of those who are obligated to pay the support. LSA - C. C. Art. 231.

Although she carried on responsible duties with the Arthur Murray Dance Studio prior to the parties' separation, plaintiff has not been employed since the divorce. She made one unsuccessful effort to work for a company selling women's undergarments. Her only income has been money given to her by her mother.

Plaintiff prayed for an award of $400 per month for the two boys. She testified her estimate was $300 per month as a bare minimum for necessities. She detailed necessary expenses of approximately $250 per month, consisting of a portion of the rent, food, clothing, haircuts and miscellaneous items.

Considering the defendant's ability to pay, the joint income tax return filed by plaintiff and defendant for 1972 showed a gross income of the dance studio for 1972 as $74,717.76, with expenses of $69,118.31, leaving a net income of $5,599.45. It is to be noted, however, that in 1972, the parties had a new home constructed for which they paid approximately $13,400 in cash and borrowed $30,000. The cash payment came from income of the dance studio. A statement of income and expense for the dance studio for the first five months of 1973 showed a gross income of $50,243.32, with expenses of $51,448.74, or a net loss of $1,205.42. Although defendant contends he is losing money in 1973, it is to be noted that his gross income is up substantially. Defendant could shed very little light on the details of his accounting or the nature

of the expense items shown on the statements and it seems obvious, particularly from his transactions in 1972, that he is able to provide for the support of his children.

On the basis of the evidence in the record, we conclude that defendant should pay the sum of $250 per month for the support of his children, pendente lite. This conclusion does not preclude an independent judgment as to the amount of permanent child support on the basis of evidence that may be adduced at the trial on the merits of this cause.

For the reasons assigned, the judgment of the district court is reversed and it is ordered, adjudged and decreed that the decree of divorce between Charlene F. Tjaden and Lawrence Owen Tjaden rendered March 13, 1973, in the Eighth Judicial District Court for the County of Clark, State of Nevada, in Proceeding No. A109571 be recognized as valid and accorded full faith and credit in the State of Louisiana. It is further ordered, adjudged and decreed that defendant, Lawrence Owen Tjaden, pay unto plaintiff, Charlene F. Tjaden, the sum of $250 per month for the care and support of the minor children, Mark Tjaden and Brent Tjaden, during the pendency of this litigation.

It is further ordered, adjudged and decreed that this cause be remanded to the Twenty-Sixth Judicial District Court in and for Bossier Parish, Louisiana, for further proceedings in accordance with law and consistent with this opinion.

The costs of appeal are assessed to the defendant-appellee.

Reversed, rendered and remanded.

APPENDIX "D"

COURT OF APPEAL

Second Circuit

State of Louisiana

Office of the Clerk, Shreveport, Louisiana. May 28, 1974.

As counsel of record in the captioned case, you are hereby notified that the application or applications for rehearing filed by Defendant-Appellee have this day been Refused, En Banc.

Charlene F. Tjaden versus Lawrence O. Tjaden

Docket No. 12,279

Comments (if any were given by the Court):

APPENDIX "E"

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

CHARLENE F. TJADEN — July 1, 1974

v.

LAWRENCE OWEN TJADEN — NO. 54,951

* * * * *

In re: Lawrence Owen Tjaden applying for certiorari, or writ of review, to the Court of Appeal, Second Circuit, Parish of Bossier.

* * * * *

Writ denied. On the facts found, the result is correct.